IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.549 OF 2005

Sou. Nirmala w/o Bharat Honmute .. Appellant

versus

Manoj Uttereshwar Paikkekari .. Respondent

Mr.A.A.Kumbhakoni with A.M.Kulkarni for appellant

Ms A.R.S.Baxi for respndent

CORAM : P.V.KAKADE, J.

DATE : 11TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by District Judge, Solapur dated 5.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Solapur dated 22.1.2001 dismissing the plaintiff’s suit for perpetual injunction simplicitor in respect of land bearing Gat No.661 admeasuring 3 H and

71 R.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff has filed the suit for perpetual injunction against the defendant on the ground that the defendant had obstructed his Vahiwat and his possession over the suit property, which claim is contested by the defendant on various grounds, inter alia, submitting that the plaintiff’s allegations are not correct and hence the suit is sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove her lawful possession over the suit land that is on the area of 3 Hector 71 R and also failed to establish that there was obstruction to the plaintiff’s possession by the defendant and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. It is the case of the plaintiff that her predecessor in title, for consideration of Rs.70,000/=, purchased the suit property by sale deed dated 23.4.1993 and since then she was in lawful possession of the suit land by virtue of ownership title. The land of the defendant was located adjacent to the north side of the suit land and the defendant was obstructing her possession over the suit land and hence the suit came to be filed. In fact it is seen from the record that the defendant had not disputed the title of the plaintiff over the suit land bearing Gat No.661, but he had disputed the area covered by land bearing Gat No.661 and disputed the possession of the plaintiff over the area admeasuring 3 H 71 R as mentioned in the plaint. According to the defendant, old Survey No.271/2 admeasuring 6 acres 28 gunthas was converted into new Gat No.661 admeasuring 2H 71R and therefore, the plaintiff cannot claim her title and possession on the area more than 2H 71R. This contention of the defendant appears to have been accepted by both the courts below on the basis of available evidence. Perusal of the judgments of both

the courts below show that the factual evidence involved in the dispute is properly appreciated by them and therefore, it would brook no interference.

5. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.983 of 2005 also stands dismissed with no order as to costs.